

or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

(Added Pub. L. 108–201, §3(a), Feb. 24, 2004, 118 Stat. 473.)

§ 9814. Qualifications pay

(a) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, if such employee—

(1) possesses unusually high or unique qualifications; and

(2) is assigned—

(A) new duties, without a change of position; or

(B) to a new position.

(b) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

(c) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

(d) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

(e) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management and the appropriate committees of Congress, that includes—

(1) criteria for approval of actions to set pay under this section;

(2) the level of approval required to set pay under this section;

(3) all types of actions and positions to be covered;

(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

(5) a process to evaluate the effectiveness of this section.

(Added Pub. L. 108–201, §3(a), Feb. 24, 2004, 118 Stat. 474.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of this title.

§ 9815. Reporting requirement

The Administrator shall submit to the appropriate committees of Congress, not later than

February 28 of each of the next 6 years beginning after the date of enactment of this chapter, a report that provides the following:

(1) A summary of all bonuses paid under subsections (b) and (c) of section 9804 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

(2) A summary of all bonuses paid under subsections (b) and (c) of section 9805 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

(3) The total number of term appointments converted during the preceding fiscal year under section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(4) The number of positions for which the rate of basic pay was fixed under section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(5) The number of scholarships awarded under section 9809 during the preceding fiscal year and the number of scholarship recipients appointed by the Administration during the preceding fiscal year.

(6) The total number of distinguished scholar appointments made under section 9810 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(7) The average amount paid per appointee, and the largest amount paid to any appointee, under section 9811 during the preceding fiscal year for travel and transportation expenses.

(8) The total number of employees who were awarded enhanced annual leave under section 9812 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan pursuant to section 9802(b)(2); and, for employees in each of those respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent section 9812).

(9) The total number of appointments made under section 9813 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(10) The number of employees for whom the Administrator set the pay under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the work-force plan pursuant to section 9802(b)(2).

(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.

(Added Pub. L. 108–201, §3(a), Feb. 24, 2004, 118 Stat. 475.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in introductory provisions, is the date of enactment of Pub. L. 108–201, which was approved Feb. 24, 2004.

CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

Sec.	
9901.	Definitions.
9902.	Establishment of human resources management system.
9903.	Attracting highly qualified experts.
9904.	Special pay and benefits for certain employees outside the United States.

§ 9901. Definitions

For purposes of this chapter—

- (1) the term “Director” means the Director of the Office of Personnel Management; and
- (2) the term “Secretary” means the Secretary of Defense.

(Added Pub. L. 108–136, div. A, title XI, §1101(a)(1), Nov. 24, 2003, 117 Stat. 1621.)

IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Pub. L. 108–136, div. A, title XI, §1101(b), Nov. 24, 2003, 117 Stat. 1633, provided that:

“(1) Any exercise of authority under chapter 99 of such title [this chapter] (as added by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

“(2) No other provision of this Act [see Tables for classification] or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section [enacting this chapter], except to the extent that it does so by specific reference to this section.”

§ 9902. Establishment of human resources management system

(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. The human resources management system established under authority of this section shall be referred to as the “National Security Personnel System”.

(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

- (1) be flexible;
- (2) be contemporary;
- (3) not waive, modify, or otherwise affect—

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

(I) providing for equal employment opportunity through affirmative action; or

(II) providing any right or remedy available to any employee or applicant for employment in the public service;

(D) any other provision of this part (as described in subsection (d)); or

(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;

(4) ensure that employees may organize, bargain collectively as provided for in this chapter, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of this chapter and any exclusion from coverage or limitation on negotiability established pursuant to law;

(5) not be limited by any specific law or authority under this title, or by any rule or regulation prescribed under this title, that is waived in regulations prescribed under this chapter, subject to paragraph (3); and

(6) include a performance management system that incorporates the following elements:

(A) Adherence to merit principles set forth in section 2301.

(B) A fair, credible, and transparent employee performance appraisal system.

(C) A link between the performance management system and the agency’s strategic plan.

(D) A means for ensuring employee involvement in the design and implementation of the system.

(E) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system.

(F) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.

(G) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.

(H) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.